

Memorandum



Date: November 8, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

Supplement to
Agenda Item No. 8(F)11

From: Carlos A. Gimenez
Mayor

A handwritten signature in dark ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

Subject: Supplemental Information for Item 8F11 – Special Transportation Services

Attached please find two reports to the Board of County Commissioners dated December 2, 2011 and August 28, 2012 regarding Special Transportation Services. These reports were inadvertently not included with Agenda Item 8F11 although referenced on the last page of the Mayor's memorandum.

Attachments

A handwritten signature in dark ink, appearing to read "Alina T. Hudak", written over a horizontal line.

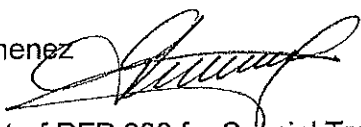
Alina T. Hudak
County Manager/Deputy Mayor

Memorandum



Date: December 2, 2011

To: Honorable Joe A. Martinez, Chairman
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Advertisement of RFP 800 for Special Transportation Services

I am in receipt of your memorandum dated October 21, 2011, requesting a status report on the advertisement of RFP 800 for Special Transportation Services (STS). The RFP for STS was advertised on October 24, 2011. A public meeting was held on October 27, 2011 to seek input from riders, and, a pre-proposal conference was held on November 4, 2011. A second public meeting was held on November 17, 2011. A single award will be made by the County for all required services. Revisions were made to the previously issued solicitation that we believe will serve to further enhance the program. Those revisions are as follows:

- Long Range Radio Frequency Identification (RFID) system requirements are included in the scope of services. Use of long range RFID technology will authenticate STS clients boarding STS vehicles equipped with RFID readers.
- The selected proposer will provide 60,000 single, unified, hybrid cards. These cards will enable clients to use both the fixed route and STS.
- Proposers will offer a fare prepayment solution that facilitates prepayment of trips in advance for clients and service centers by accepting multiple payment methods (cash, check/e-check, credit card).

The following options, to be exercised at the County's sole discretion, are included and will be priced separately:

- Real-Time Digital Video Surveillance System: To record audio and video real-time.
- Incident Based Vehicle Video Technology: To capture video for incidents triggered by excessive acceleration, excessive braking, excessive idling, excessive speed, sudden changes in direction and door open indicators.
- Riders' Picture Identification Integration: To display the most updated picture of the rider when the RFID card is detected by the RFID Reader.
- Multilingual capabilities of mobile data terminals (MDT) or comparable technology: To display menus and system messages in three languages (English, Spanish, and Creole).

Revisions to performance standards, liquidated damages, and evaluation criteria were made due to incorporation of other requirements as stated above.

Please be reminded that this RFP remains under the Cone of Silence.

c: Honorable Harvey Ruvin, Clerk of the Courts
Jesus Garcia, Chair of CODI Transportation Committee
Chip Iglesias, Chief of Staff/Deputy Mayor
Alina T. Hudak, County Manager/Deputy Mayor
Edward Marquez, Deputy Mayor
Robert A. Cuevas, Jr., County Attorney
Bruce Libhaber, Assistant County Attorney
Ysela Llort, Interim Director, Miami-Dade Transit Department
Lester Sola, Director, Internal Services Department
Clerk of the Board

Memorandum



Date: August 28, 2012
To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners
From: Carlos A. Gimenez 
Mayor
Subject: Status Update on Successor Contract for Paratransit Transportation Services (RFP No. 800)

This is to advise the Board of County Commissioners (Board) of the status of the referenced solicitation to establish the successor contract to the County's existing contract for Paratransit Transportation Services. Due to delays in the process described below, I will be recommending an extension of the current contract for up to six months with Advanced Transportation Solutions, LLC (ATS), as the current contract expires on September 30, 2012. Staff is working diligently to expedite the award of the new contract. As they are aware, I am not pleased about asking for this extension, but the timeline and circumstances leave no other option.

On October 24, 2011, the County issued a new solicitation (RFP No. 800) to secure a provider for Special Transportation Services. On December 16, 2011, three proposals were received in response to the solicitation. The proposal from Professional Medical Transportation was deemed non-responsive by the County Attorney's Office (see attached), because the proposal did not include the required Buy America certification form. The two remaining proposals from Super Nice STS, Inc. d/b/a Transportation America (Super Nice) and First Transit, Inc. (First Transit) are currently being evaluated by the Evaluation/Selection Committee (Committee). The Committee is comprised of professional County staff, as well as STS riders. The County has worked with the Committee members to schedule meetings based on their availability to address areas of concern, and provide all the information needed to evaluate the proposals.

During the evaluation of proposals, questions surfaced regarding some of the information provided. Staff worked with the County Attorney's Office to review the proposals and determine the best method to obtain clarity regarding the information submitted. On March 22, 2012, a request was sent to Super Nice and First Transit requesting clarification of material information contained in their proposal. The Proposers were asked to provide proof of all contracts listed as references, and provide details regarding the experience of the firm and its key personnel. First Transit's response to the letter was received on April 3, 2012; Super Nice's response was received on April 5, 2012. This information was reviewed by procurement staff. A request for legal opinion and guidance was sent to the County Attorney's Office on May 4, 2012. A legal opinion was provided May 29, 2012 (see attached). Due to scheduling conflicts, the Committee could not meet until June 29th to review the opinion. Two Committee members then advised they needed more time to review the legal opinion before completing their evaluation. At the Committee meeting of August 2, 2012, the County Attorney reviewed the legal opinion with the Committee and addressed questions. Afterwards, Committee members finalized the technical scoring and set a date for opening the price proposals.

Price proposals were received on August 21, 2012. On August 24, 2012, the Committee met to review the pricing submissions. The Committee is in the process of submitting the results of the evaluation. Negotiations will be conducted and an award recommendation will be submitted for consideration by me, the CITT, the Transportation Committee, and the full Board. If approved at Committee, a waiver to the next available Board meeting will be requested.

Once the new contract is approved, the awarded Contractor will need time to mobilize its operations and meet all requirements of the solicitation. Efforts required of the Contractor to become fully operational include securing a fleet of vehicles and personnel, as well as the purchase, installation, and successful testing of electronic equipment, Automated Vehicle Location/Global Positioning System (AVL/GPS), Mobile Data Terminals and long-range Radio Frequency Identification (RFID) card readers. This transition period is estimated to take up to four months.

The combination of delays in the process and the required transition time for the new contract leave no choice but to recommend an extension of the current contract with ATS for up to six months. This is necessary in order to avoid interruptions in service to STS riders since the current contract expires on September 30, 2012. This month-to-month contract extension is needed given the time and process required for a new contract award, and the transition period required once a contractor is selected. This extension will be presented for approval at the next available Regional Transportation Committee.

Attachments

c: R. A. Cuevas, Jr., County Attorney
Alina T. Hudak, Deputy Mayor/County Manager
Edward Marquez, Deputy Mayor
Lester Sola, Director, Internal Services Department
Ysela Llort, Director, Miami-Dade Transit

Memorandum



Date: January 26, 2012

To: Namita Uppal
Contracting Officer
Internal Services Department

From: Bruce Libhaber
Assistant County Attorney

Subject: RFP 800 (Special Transportation Services)
Proposer: Professional Medical Transportation Corp.

You have asked this office if the bid submitted by Professional Medical Transportation Corp. ("Professional Medical") is responsive.

FACTS

We rely on the information provided in your January 25, 2012 e-mail correspondence to me regarding the bidding issues, the terms of the RFP itself and the proposal submitted by Professional Medical. The purpose of the RFP is to establish a contract for the purchase of special transportation services for Miami-Dade Transit. This contract is anticipated to be funded, at least in part, with federal funds. As such, Federal Transit Administration (FTA) regulations have been included in the RFP solicitation documents. In particular, this RFP included a Buy America Certificate of Compliance or Non-Compliance. (Exhibit FED-BY2, p.105 of RFP 800) Professional Medical submitted and signed the Buy America form. Professional Medical did not however, check any of the three boxes on the form indicating whether or not it was certifying it would or would not comply with the Buy America provisions. You have asked us to determine whether this failure to fill out the form renders the proposal as non-responsive.

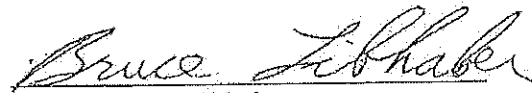
DISCUSSION

As mentioned above, it is anticipated that the contract arising from this RFP will be funded, at least in part, with federal funds. As such, FTA procurement guidelines are to be included and followed in this RFP solicitation. One of the governing FTA regulations applicable to this particular procurement is the Buy America requirement when the purchase of rolling stock is involved with the contract. 49 CFR Part 661, Section 661.13(b) states "A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (Exhibit FED-BY2) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive." In this instance, Professional Medical qualifies as a bidder or offeror. Miami-Dade County, through Miami-Dade Transit, is an FTA recipient. RFP 800 is for an FTA-funded contract. This contract is not subject to a general waiver of the Buy America provisions. Professional Medical, in its submittal, did not complete the Buy America certification form nor commit to comply with the Buy America provisions. As such, the clear, unambiguous language of the 49 CFR Part 661 mandates a finding of non-responsiveness.

In addition, Attachment H to RFP 800 (p. 114) includes the very same language cited above from 49 CFR Part 661. Furthermore, the Buy America form provided in RFP 800 (p.105) states "If the bidder . . . submits the wrong certification of compliance, that bid is non-responsive and cannot be considered." Therefore, the RFP itself clearly states that Buy America is a requirement, the submittal of a correct Buy America form needed to be included with the proposal, and the consequence of failing to

comply is a rejection of the proposal as non-responsive. A signed, blank Buy America form does not indicate that the proposer has committed to meeting this federal requirement.

For the aforementioned reasons, based on the clear language of the applicable federal regulations and the RFP documents, the proposal of Professional Medical must be rejected as non-responsive.

A handwritten signature in cursive script, reading "Bruce Libhaber".

Bruce Libhaber

Assistant County Attorney

Memorandum



Date: May 29, 2012

To: Namita Uppal/Fred Simmons, Jr.
Procurement Contracting Division
Internal Services Department

From: Bruce Libhaber
Assistant County Attorney

Subject: Legal Opinion for RFP 800, Special Transportation Services

This memorandum is in response to your inquiries dated May 4, 2012 and May 18, 2012 (inquiries restated in italics below, attachments to inquiries not included in this memorandum). You asked for guidance related to the above-referenced Request for Proposals ("RFP"). In particular, you presented several issues with respect to the proposals from (A) Super Nice STS, Inc. d/b/a Transportation America and (B) First Transit, Inc. My opinion follows each question below:

On December 16, 2011, three proposals were received in response to the Request for Proposals (RFP) No. 800, Special Transportation Services. The proposal from Professional Medical Transportation was deemed non-responsive by your office on January 26, 2012. The remaining two proposals from Super Nice STS, Inc. d/b/a Transportation America and First Transit, Inc. were distributed to the evaluation/selection committee appointed by the County Mayor for the RFP. The Federal Employer Identification Numbers (FEIN) are as follows:

- a) Super Nice STS, Inc. d/b/a Transportation America: 320127752*
- b) First Transit, Inc.: 231716119*

On March 22, 2012, letters (Attached herein as Exhibit A) requesting proof of all contracts listed by proposers in their proposal in response to Attachment G, Proposer Information, of the subject RFP were sent to both proposers. This Attachment G is included as Exhibit B to this document. The information provided by proposers in response to Attachment G of the RFP will be evaluated by the evaluation/selection committee in accordance with the evaluation criteria specified in Section 4.2 of the RFP attached herein as Exhibit C.

Both proposers provided information in response to the March 22, 2012 letter. The responses are attached herein as Exhibit D (Response from Super Nice STS, Inc.), and Exhibit E (Response from First Transit, Inc.).

Based on the review of the proposal and responses to the March 22 letter, your legal opinion/guidance is requested on the following issues:

(A) Issues related to the proposal from Super Nice STS, Inc. d/b/a Transportation America

- i. Page 1 of the proposal from Super Nice STS, Inc. (Exhibit F) lists Transportation America, Inc. as the d/b/a for Super Nice STS, Inc. Transportation America, Inc. is a separate legal entity from the Super Nice STS, Inc. The FEIN of Transportation America, Inc. is 651120042. This FEIN is different from the FEIN of Super Nice STS, Inc. Both of these firms are owned by Mr.*

Raymond Gonzalez and René Gonzalez. Transportation America, Inc. is neither the prime nor a sub-contractor to Super Nice STS, Inc.

Question 1: *How should the evaluation/selection committee consider this inconsistency in the proposal submitted by Super Nice STS, Inc.?*

Answer 1: The inclusion of "Inc." after Transportation America in the cover letter of the proposal is immaterial and should be ignored. Super Nice STS, Inc. has registered Transportation America with the Florida Secretary of State as a fictitious name. (A copy of the filing is attached). The misstatement of a d/b/a name on one page of the proposal does not affect the evaluation of the proposal nor provide a proposer with an unfair advantage. This is consistent with the fact that the proposer submitted its proposal and signed it using Super Nice STS, Inc., d/b/a Transportation America. See Super Nice STS, Inc., d/b/a Transportation America Proposal at Form A-1 (proposer identification and authorized signature).

In reviewing the entire proposal submitted by Super Nice STS, Inc. d/b/a Transportation America, it is clear that the intent is to bind proposer Super Nice STS, Inc. The cover letter itself, including the page with the erroneous use of "Inc.," is labeled "Transportation America Proposal" and includes headers and footers stating "Transportation America." In addition to Form A-1, Super Nice STS, Inc. lists Transportation America as the d/b/a in other affidavits and signed forms, including Form A-2 (lobbyist registration), Form A-3 (acknowledgement of addenda); Form A-5 (subcontractor identification form), Form A-6 (fair subcontracting policies), Prime and Subcontractors Information Form (Attachment F), Exhibit FED-DB-1 (Attachment F, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion [Lower Tier Covered Transaction]), Exhibit FED-LB1 (Lobbying Certification), Exhibit FED-DA1 (Certification of Performance of Safety-Sensitive Functions), and Information for MDT Bidders List.

- ii. *In response to item 1 (A) of the Attachment G of the RFP, the proposal from Super Nice STS, Inc. listed the following contracts from the past six (6) years to demonstrate proposers' experience with similar services. See pages 7 to 21 under Tab 3-1A of the proposal.*

<i>Client</i>	<i>Proposal Page #</i>	<i>Information received in Response to County's March 22, 2012 letter</i>	<i>Information from Sunbiz.org</i>
<i>Medicare</i>	<i>Page 8 under Tab 3-1A</i>	<ul style="list-style-type: none"> - There is no hard copy of the contract. - Providers go through "qualification" process. - Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service. 	
<i>Medicaid</i>	<i>Page 9 under Tab 3-1A</i>	<ul style="list-style-type: none"> - There is no hard copy of the contract - Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service. Express, Inc. 	<i>FEIN of MCT Express, Inc.: 651002016</i>
<i>Leon Medical Center Health Plan</i>	<i>Page 10 under Tab 3-1A</i>	<ul style="list-style-type: none"> - Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service. 	<i>FEIN of MCT Express, Inc.: 651002016</i>
<i>Leon Medical Center Health Plan</i>	<i>Page 11 under Tab 3-1A</i>	<ul style="list-style-type: none"> - Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service. 	
<i>Baptist Health Systems</i>	<i>Page 13 under Tab 3-1A</i>	<ul style="list-style-type: none"> - Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service and Medical Care Express, Inc. 	<i>FEIN of MCT Express, Inc.: 651002016 and FEIN of Medical Care Transportation, Inc.: 650630663</i>
<i>Veterans Administration Hospital</i>	<i>Page 14 under Tab 3-1A</i>	<ul style="list-style-type: none"> - There is no hard copy of the contract. - Providers go through an approval process. - Contractor is Medical Care Transportation, Inc. : 	<i>FEIN of Medical Care Transportation, Inc.: 650630663</i>
<i>Preferred Care Partners</i>	<i>Page 16 under Tab 3-1A</i>	<ul style="list-style-type: none"> - Contractor is Medical Care Transportation, Inc. 	<i>FEIN of Medical Care Transportation, Inc.: 650630663</i>
<i>Preferred Care Partners</i>	<i>Page 17 under Tab 3-1A</i>	<ul style="list-style-type: none"> - Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service. 	<i>FEIN of MCT Express, Inc.: 651002016</i>
<i>Bascom Palmer Eye Institute</i>	<i>Page 19 under Tab 3-1A</i>	<ul style="list-style-type: none"> - Contractor is Medical Care Transportation, Inc. 	<i>FEIN of Medical Care Transportation, Inc.: 650630663</i>
<i>University of Miami Transportation Services</i>	<i>Page 20 under Tab 3-1A</i>	<ul style="list-style-type: none"> - Contractor is Medical Care Transportation, Inc. 	
<i>Office of the State Attorney Transportation Services</i>	<i>Page 21 under Tab 3-1A</i>	<ul style="list-style-type: none"> - Contractor is Medical Care Transportation, Inc. 	

Question 2a: Can the evaluation/selection committee consider the above contracts under the experience category of the proposer (RFP Attachment G, item # 1A)? Please note that the proposer is a different legal entity than the contractors listed above.

Answer 2a: No, the evaluation/selection committee cannot consider contracts which involve separate and distinct legal entities from the proposer.

Question 2b: Can the evaluation/selection committee consider the above contracts under the experience category its key personnel (RFP Attachment G, item # 1E) since Mr. Raymond Gonzalez is the owner of companies listed above.

Answer 2b: Yes, the evaluation/selection committee can consider performance under the contracts referenced in your memorandum under the experience category of its key personnel to the extent that the evaluation/selection committee determines that such "key personnel" had a role in the other contract(s).

iii. In response to item 1 (C) of the Attachment G of the RFP, the proposal from Super Nice STS, Inc. listed the following contracts that the proposer or its sub-contractors performed for Miami-Dade County. See pages 1 to 8 under Tab 3-1C of the proposal.

Client	Proposal Page #	Information received in Response to the County's March 22, 2012 letter	Information from Sunbiz.org
Miami-Dade Transit Department	Page 2 under Tab 3-1C	- Contractor is Advanced Transportation Solutions, LLC (ATS)*	FEIN of ATS: 651112087
Miami-Dade Transit Department	Page 4 under Tab 3-1C	- Contractor is Advanced Transportation Solutions, LLC (ATS). - Transportation America was the largest service provider company in the contract.	
Public Health Trust	Page 6 under Tab 3-1C	- Contractor is MCT Express, Inc. d/b/a/ Miami-Dade Ambulance Service.	FEIN of MCT Express, Inc.: 651002016
Miami-Dade County Department of Emergency Management	Page 8 under Tab 3-1C	- Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service	FEIN of MCT Express, Inc.: 651002016

*Super Nice STS, Inc. is a sub-contractor to ATS and performs approximately 42% of the trips. See page 1 of the proposal.

Question 3a: For evaluation purposes under the experience category of the proposer (RFP Attachment G, item # 1A), can the evaluation/selection committee consider the entire contract with ATS or the actual work that is performed by the proposer itself as a sub-contractor.

Answer 3a: The evaluation/selection committee should only consider the actual work that is performed by the proposer itself as a sub-contractor. In evaluating Super Nice STS, Inc. under the category of proposer's experience, for the existing contract for Special Transportation Services with the County, the evaluation/selection committee should only consider those portions of the contract performed by Super Nice STS, Inc.

Question 3b: Can the evaluation/selection committee consider the above two contracts with MCT Express, Inc. under the experience category of the proposer (RFP Attachment G, item #1A)? Please note that the proposer is a different legal entity than the contractor.

Answer 3b: No, the evaluation/selection committee cannot consider the contracts referenced in your memorandum under the experience category of the proposer because the legal entities that entered into such contracts were separate and distinct legal entities from the proposer.

Question 3c: Can the evaluation/selection committee consider the above contracts under the experience category of its key personnel (RFP Attachment G, item # 1E) since Mr. Raymond Gonzalez is the owner of companies listed above.

Answer 3c: Yes, the evaluation/selection committee can consider performance under the contracts referenced in your memorandum under the experience category of its key personnel to the extent that the evaluation/selection committee determines that such "key personnel" performed in the other contract(s).

- iv. In response to item 1 (A) of the Attachment G of the RFP, the proposal from Super Nice STS, Inc. listed multiple contracts with their dollar values. The March 22, 2012 letter issued by the County requested proof of all contracts from proposers. The information provided by Super Nice STS, Inc. in response to this letter does not validate the dollar values of the contracts.

Question 4: Please advise how the evaluation/selection committee should evaluate this information.

Answer 4: Super Nice STS, Inc.'s proposal includes a list of multiple contracts for transportation services provided by Super Nice STS, Inc., including the name of the entity contracting with Super Nice STS, Inc., as well as the dollar amount of such contracts. Your March 22, 2012 letter requested verification of all such contracts and their dollar amounts from both proposers. The procurement officer may request such information from the proposers to assist the selection/evaluation committee. The officer may also notify the proposers that if such information is not provided by a date certain, then the selection/evaluation committee may be instructed that such information had previously been requested of the proposers and to the extent that the information is not provided, the committee members are free to adjust their evaluations accordingly.

(B) Issues related to the proposal from First Transit, Inc.

Question 5: To evaluate the financial capability (Attachment G, item 2A) of First Transit, Inc. can the evaluation/selection committee consider the financial resources of FirstGroup America, Inc. (parent company of First Transit, Inc.) or just the financial resources of First Transit, Inc. See page 26 of attachment 3 of the proposal submitted.

Answer 5: The selection/evaluation committee may only evaluate the financial capability of First Transit, Inc. First Transit, Inc. is the sole proposer and its proposal does not contain any indication that the parent company, FirstGroup America, Inc., is financially backing or otherwise guaranteeing this proposal.

Question 6: First Transit, Inc. proposed the following sub-contractors in their proposal: Handi-Van, Inc.; Zuni Transportation, Inc.; ProMed Transportation Corporation; and Terrell Industries, Inc. The information regarding sub-contractors is consistent in the forms submitted by the proposer. Page 140 of the proposal includes a statement regarding introduction of a

new provider "Maruti Fleet and Management". Please advise how the evaluation/selection committee should consider this information.

Answer 6: The selection/evaluation committee shall only evaluate the subcontractors listed on the appropriate forms submitted by the proposer. Specifically, Form A-5 (Subcontractor / Supplier Listing) is mandatory and requires a listing of all subcontractors. Pursuant to the language of the form and consistent with Ordinance No. 97-104, "[a] bidder or proposer who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified except upon the written approval of the County." Accordingly, Maruti Fleet and Management should not be considered as part of this proposal.

Question 7: In response to item 1 (A) of the Attachment G of the RFP, the proposal from First Transit Inc. listed multiple contracts. However, First Transit, Inc. did not include dollar values of these contracts in its proposal or in response to the County's March 22, 2012 letter. Since the intent of the March 22 letter was to validate the information already provided in the proposal and not to allow the firms to supplement additional information. The evaluation/selection committee will be advised to evaluate the proposals without this information. Please advise if this approach is consistent with the County policies and procedures.

Answer 7: First Transit, Inc.'s proposal includes a list of multiple contracts for transportation services provided by First Transit, Inc., including the name of the entity contracting with First Transit, Inc., as well as the dollar amount of such contracts. Your March 22, 2012 letter requested verification of all such contracts and their dollar amounts from both proposers. The procurement officer may request such information from the proposers to assist the selection/evaluation committee. The officer may also notify the proposers that if such information is not provided by a date certain, then the selection/evaluation committee may be instructed that such information had previously been requested of the proposers and to the extent that the information is not provided, the committee members are free to adjust their evaluations accordingly.

(C) Issues Raised in Fred Simmons's May 18, 2012 Correspondence

Question: Please review the DBE Certification of Assurance for RFP No. 800 provided, and the manner in which they are filled out, and advise if this impacts the responsiveness of either Proposer.

Answer: The purpose of this Certification of Assurance is to provide the County with a commitment from the proposer to meet the DBE goal provided in RFP No. 800. In this case, the RFP included a minimum DBE participation goal of 12 percent of the total price of the contract. See RFP No. 800, Attachment J. "A proposal that fails to include the Certification of Assurance . . . may be deemed non-responsive." *Id.* To the extent that there is a responsibility determination, that determination is that the proposer includes a Certification of Assurance committing to meeting the DBE goal. In reviewing the submissions of First Transit, Inc., and Super Nice STS, Inc. d/b/a Transportation America, both parties have submitted Certifications of Assurance for the subject RFP in which they have, respectively, committed to meeting the

DBE goal. Accordingly, neither proposal can be deemed non-responsive for failing to provide a Certification of Assurance.

In addition to submitting signed Certifications of Assurance for the prime contractors, both proposals included an executed Form A-5 (Subcontractor/Supplier Listing), both proposals included at least one DBE business on their respective listings, and both proposals included executed Prime and Subcontractor Information forms from the prime contractor and all subcontractors listed on their respective Forms A-5.

First Transit, Inc. also included signed Certifications of Assurance from its subcontractors, including its listed DBE subcontractors, while Super Nice STS, Inc. d/b/a Transportation America did not include such certifications from its subcontractors. To the extent one were to allege that either proposer filled out the Certification of Assurance form in an incorrect manner, the use of "may" in the above-referenced RFP language is permissive as opposed to mandatory. The inclusion (or lack of inclusion) of a Certification of Assurance form from a subcontractor cannot form the basis of a responsiveness determination, as the only assurance sought by the County is that of the prime contractor. Additionally, the Certification of Assurance form is part of a federally-approved plan that allows the issue to be one of responsibility as opposed to responsiveness. As such, it is not required, even if the Certificate of Assurance was improperly filled out, to deem either proposal non-responsive.

Moreover, while the Assurance Form provided included space to indicate how much work would be performed by the DBE(s), the amount of work to be performed by each DBE is only required in the solicitation to be provided two days prior to negotiations and is thus a condition of award, not a condition of responsiveness. See RFP No. 800, Attachment J (requiring a schedule of participation executed by the prime two days prior to scheduled negotiations or award date). The amount committed to each DBE firm may be changed as long as each DBE firm listed continues to participate and the overall DBE participation meets or exceeds the 12% floor as set forth in the solicitation.

Should you have any other questions, please feel free to contact me.

A handwritten signature in dark ink, appearing to read "Alexander S. Bokor", followed by the letters "FOR" in a slightly larger, bolder script.

Bruce Libhaber

Assistant County Attorney

- c: Alina T. Hudak, County Manager
- Lester Sola, Director, Internal Services Department
- Miriam Singer, Assistant Director, Internal Services Department
- Alexander S. Bokor, Assistant County Attorney
- Amos Roundtree, Division Director, Internal Services Department